

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

RUSSELL MITCHELL,

Petitioner,

v.

Civ. Action No. 1:19-CV-10
(Kleeh)

FREDERICK ENTZEL,

Respondent.

**ORDER ADOPTING REPORT AND RECOMMENDATION [ECF NO. 24], GRANTING
MOTION TO DISMISS [ECF NO. 15], AND DISMISSING PETITION**

On January 22, 2019, the pro se Petitioner, Russell Mitchell ("Petitioner"), filed a Petition for Habeas Corpus Pursuant to 28 U.S.C. § 2241. Petitioner argued that the Bureau of Prisons ("BOP") staff failed to properly apply its own policies when disciplining him for contraband found in his cell.

Pursuant to 28 U.S.C. § 636 and the local rules, the Court referred the action to United States Magistrate Judge Michael J. Aloi (the "Magistrate Judge") for initial review. The Government filed a Motion to Dismiss for Failure to State a Claim. On January 9, 2020, the Magistrate Judge entered a Report and Recommendation ("R&R"), recommending that the Court grant the Government's Motion and dismiss with prejudice the Petition for failure to exhaust administrative remedies.

The R&R also informed the parties that they had fourteen (14) days from the date of service of the R&R to file "specific written

**ORDER ADOPTING REPORT AND RECOMMENDATION [ECF NO. 24], GRANTING
MOTION TO DISMISS [ECF NO. 15], AND DISMISSING PETITION**

objections, identifying the portions of the Report and Recommendation to which objection is made, and the basis of such objection." It further warned them that the "[f]ailure to file written objections . . . shall constitute a waiver of de novo review by the District Court and a waiver of appellate review by the Circuit Court of Appeals." Petitioner accepted service of the R&R on January 13, 2020. To date, no objections have been filed.

When reviewing a magistrate judge's R&R, the Court must review de novo only the portions to which an objection has been timely made. 28 U.S.C. § 636(b)(1)(C). Otherwise, "the Court may adopt, without explanation, any of the magistrate judge's recommendations" to which there are no objections. Dellarciprete v. Gutierrez, 479 F. Supp. 2d 600, 603-04 (N.D.W. Va. 2007) (citing Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983)). Courts will uphold portions of a recommendation to which no objection has been made unless they are clearly erroneous. See Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

Because no party has objected, the Court is under no obligation to conduct a de novo review. Accordingly, the Court reviewed the R&R for clear error. Upon careful review, and finding no clear error, the Court **ADOPTS** the R&R [ECF No. 24]. The Government's Motion to Dismiss [ECF No. 15] is **GRANTED**. The Petition is **DISMISSED WITH PREJUDICE**. This action is **STRICKEN**

ORDER ADOPTING REPORT AND RECOMMENDATION [ECF NO. 24], GRANTING
MOTION TO DISMISS [ECF NO. 15], AND DISMISSING PETITION

from the Court's active docket.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to counsel of record and to the pro se Petitioner, via certified mail, return receipt requested, at the last known address as shown on the docket.

DATED: January 31, 2020



THOMAS S. KLEEH
UNITED STATES DISTRICT JUDGE